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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 29250-000314/US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number 09/401,326	Filed September 23, 1999
On ____	First Named Inventor Kyoung KIM	
Signature_____	Art Unit 2616	Examiner Alpus Hsu
Typed or printed name ____		

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 35,416.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

_____ Signature

Gary D. Yacura
Typed or printed name

703.668.8000
Telephone number

August 11, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Kyoung Kim
Application No.:	09/401,326
Filed:	September 23, 1999
Group:	2616
Examiner:	Alpus Hsu
For:	System and Method for Reverse Link Overload Control

Attorney Docket No.: 29250-000314/US

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Mail Stop AF

August 11, 2006

REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Sir:

Further to the concurrent filing of the attached Notice of Appeal, the following remarks are submitted in connection with the above-identified patent application under the Pilot Program for Pre-Appeal Brief Conference (Off. Gaz. Patent & Trademark Office, Vol. 1296, No. 2, July 12, 2005).

Claims 2-11 and 13-23 are pending, of those, claims 2, 3, 5, 6, 13, 14, 16, and 17 are independent.

Rejection For Which Conference Is Requested

A Pre-Appeal-Brief Conference is requested to review the rejection of claims 2-11 and 13-23, as being incomplete for omitting essential steps, under 35 USC 112, second paragraph.

The Examiner alleges that independent claims 2, 3, 5, 6, 13, 14, 16, and 17 fail to recite the "essential step" of recursive calculating/updating load level after the step of calculating an initial load level. To support his allegation, the Examiner cites page 3, lines 22-28, of the present application, which discloses, *inter alia*:

> **In one embodiment**, the present invention is a call admission controller of a wireless network base station, such as a CDMA base station, which utilizes multiple load level estimating methods, whereby a first load level estimating method generates an initial load level estimate, and at least one additional estimating method recursively generates updated load level estimates as a function of changes in the number of users and/or changes in base station receive power. (Emphasis added.)

MPEP 2164.08(c) provides that in determining whether an unclaimed step is an *essential* step, the **entire** disclosure must be considered. The MPEP further provides that an enablement[1] rejection "should be made only when the language of the specification makes it clear that the limitation is critical for the invention to function as intended." (Emphases added.) However, broad language in the specification tends to rebut arguments of criticality.

As quoted above, page 3, lines 22-28, of the present application discloses **one embodiment** of the present invention, not the entire invention as a whole. Although the cited section discloses "at least one additional estimating method recursively generates updated load level estimates," no where does it disclose that this step is critical for the invention to function as intended.

In addition, as provided by MPEP 2164.08(c), broad language in the specification tends to rebut the argument of criticality. For example, originally filed claim 1 recited:

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[1] MPEP 2172.01 provides that unclaimed essential matter may be rejected under 35 U.S.C. 112, first paragraph, as not enabling, and a claim which fails to interrelate essential elements may be rejected under 35 U.S.C. 112, second paragraph, for failure to point out and distinctly claim the invention.

1.   A method of controlling call admission in a communications network, comprising:

            calculating a load level as a function of at least one of a change in power measurements or a change in number of users values; and

            controlling call admission based on the calculated load level.

It is well known that originally filed "claims constitute their own description." *In re Keller, 204 USPQ 702, 706.* Accordingly, because original claims constitute their own description, and original claim 1 recites example embodiments of the present invention without the "recursive calculating/updating load level step after the step of calculating an initial load level." Applicants respectfully submit that the "recursive calculating/updating load level" step is not critical, therefore, not required in the independent claims.

MPEP 2172.01 provides that '[I]t is not essential to a patentable combination that there be underdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result.' (Emphasis added.) In addition, various elements need not serve independent purposes. In other words, even if steps are interdependent to each other, recitation of these steps is not necessary in an independent claim to comply with §112, second paragraph, for omitting essential steps. Contrary to the Examiner' position, and as supported by the MPEP and case law, the step of recursive calculating/updating load level after the step of calculating an initial load level is not necessary.

For at least the reasons given above, Applicants submit that claims 2, 3, 5, 6, 13, 14, 16, and 17 comply with §112, second paragraph; thus, the claims are patentable.

CONCLUSION

In view of the above remarks, Appellants request the Pre-Appeal Brief Conference to find in favor of Appellants' positions and arrange for withdrawal of the above-noted rejections, culminating in the sending of a Notice of Allowance of the pending claims.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

By _____

Gary D. Yacura
Reg. No. 35,416
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

GDY/LYP:tlt